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May 15, 2017

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: ***Liberian Broadcasting, Inc. v. Comcast Corporation, File No. CSR-8922-P,
MB Docket No. 16-121***

Dear Ms. Dortch:

Enclosed is the Public version of the summary of a meeting with Commission staff on May 11, 2017, filed on behalf of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") pursuant to 47 C.F.R § 1.1208.

Comcast is today filing the Confidential version of this Summary in hard copy at the Secretary's Office and serving a copy to counsel for Liberman Broadcasting, Inc. and LBI Media, Inc.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael D. Hurwitz
*Counsel for Comcast Corporation and
Comcast Cable Communications, LLC*

Enclosure

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Re: ***Liberman Broadcasting, Inc. v. Comcast Corporation, File No. CSR-8922-P,
MB Docket No. 16-121***

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1208, Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) provide the following summary of the points made by Comcast representatives at a meeting on May 11, 2017 with Mary Beth Murphy, Martha Heller, and Raelynn Remy of the Media Bureau and Susan Aaron of the Office of General Counsel (the latter by phone). The meeting was in response to questions posed by the Bureau in the above-captioned restricted proceeding concerning the Estrella TV white area satellite feed provided by Liberman Broadcasting, Inc. and LBI Media, Inc. (together, “LBI”). The Comcast representatives at the meeting were Frank Buono (Comcast), Michael Nissenblatt (Comcast Cable), Jay Cohen (Paul Weiss), and the undersigned, and the LBI representatives participating at the meeting were Markham Erickson, Chris Bjornson, and Matt Friedman (all of Steptoe & Johnson), and Lenard Liberman and Cathy Edgerton Lewis (both of LBI).

The Comcast representatives made the following points:

- The Bureau should affirm its Order released on August 26, 2016 finding that Estrella TV as a broadcast licensee is not a “video programming vendor” (“VPV”) with standing to file a program carriage complaint under Section 616 of the Communications Act (and Section 76.1301 of the Commission’s rules) or under the *Comcast-NBCU Order* and conditions.¹

¹ *Liberman Broadcasting, Inc. v. Comcast Corp.*, Memorandum Opinion and Order, 31 FCC Rcd. 9551 (MB 2016) (“Order”).

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The Bureau's decision properly interpreted the relevant provisions and definitions of the Communications Act and Congress's clear intent on this issue, as embodied in Commission precedent and practice. The Bureau also should deny Estrella TV's petition for reconsideration of that Order for the reasons set out in Comcast's previously filed Opposition.²

- Based on the existing record, it would be inappropriate and premature for the Bureau to determine whether Estrella TV is a VPV with respect to its white area feed.
 - LBI chose to file a petition for reconsideration of the Bureau's Order determining that LBI lacks standing to bring a program carriage complaint *insofar as it sought broadcast station retransmission for itself or its affiliates*, and the Bureau should act on LBI's petition.³ If the Bureau affirms its prior conclusion (as Comcast firmly believes is the correct course), then LBI may choose to file a complaint laying out its program carriage theory and mustering relevant evidence as to its white area feed, and Comcast will fully answer that complaint. That is precisely what was contemplated in the Bureau's Order,⁴ and (as jointly confirmed at the meeting) the parties' tolling agreement preserves LBI's ability to file this or any other complaint without prejudice as to the additional time that has elapsed.
 - An FCC decision on whether an entity is a VPV with respect to its white area feed could have significant consequences in the marketplace. It should not be made lightly, and certainly not without the benefit of additional briefing and a fully developed record. A new complaint (should LBI decide to pursue it) focused on Estrella TV's claims regarding its white area feed and answer by Comcast—based on the facts presented—are the most appropriate vehicle for making this determination. The Bureau previously stated that it “offer[ed] no opinion” on this issue,⁵ and it

² See Opposition of Comcast Corp., MB Docket No. 16-121 (filed Oct. 6, 2016).

³ At the meeting, LBI's counsel repeatedly attempted to re-litigate the issues that were fully briefed in the petition for reconsideration filed by LBI and the responsive pleadings thereto, notwithstanding the fact that this was not the subject matter of the meeting. Comcast stands in this regard on its opposition to the petition for reconsideration.

⁴ Order at n.7 (“[W]e dismiss LBI's complaint on the basis that it has sought relief as a broadcast licensee and thus lacks standing to bring a program carriage complaint. We note, however, that to the extent Estrella TV acts as a non-broadcast network that qualifies as a video programming vendor under the statute, it is free to file a program carriage complaint on that basis. In addition, with regard to its retransmission consent negotiations for carriage of its broadcast television stations, LBI could file a complaint pursuant to the retransmission consent rules if it believes that Comcast is failing to negotiate retransmission consent in good faith. See 47 CFR § 76.65(b).”); *id.* at n.77 (“Because we dismiss LBI's program carriage complaint without prejudice, it may file another program carriage complaint in its capacity as a non-broadcast network, to the extent that it is operating as such a network.”).

⁵ *Id.* (“We offer no opinion herein on the merits of a potential LBI claim that Estrella TV is a non-broadcast network by virtue of its provision of a satellite feed to Comcast for distribution of its programming to white areas.”).

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should continue to withhold judgment until it has the benefit of a full briefing on the relevant facts and arguments.

- Limited to the existing record, however, LBI has no basis to assert it is a VPV for purposes of its white area feed based on several undisputed facts.
 - Estrella TV is fundamentally a broadcast network; broadcast stations are its primary method of distribution. For this reason, a white area feed makes no sense as a standalone offering (unlike NBC Universo or any other cable network, which have *no* “white areas” to speak of). Instead, broadcast white area feeds are offered in the marketplace as supplementary/fill-in services where broadcast networks like Estrella TV lack broadcast station coverage (through owned-and-operated stations or affiliates). Moreover, the Estrella TV white area feed includes the same Estrella TV national network programming as its core over-the-air broadcast station signals.
 - The Estrella TV white area feed should be treated just as it was treated during the parties’ negotiations—as *part and parcel of retransmission consent negotiations*. {
[REDACTED]
} Those facts are not in dispute.
 - The record on this point thus makes clear that the Estrella TV white area feed is simply an adjunct to its broadcast station signal carriage, {
[REDACTED]
}^6
- This case, of course, is about not only distribution but also carriage fees that LBI demanded and Comcast determined were unwarranted for the Estrella TV programming, both as to the broadcast station signals in the retransmission consent markets and the white area feed elsewhere. LBI’s request for compensation for the white area feed is out of step with how it is treated in the broader marketplace. At the close of the record, there was no evidence that

⁶ See, e.g., Complaint of Liberman Broadcasting, Inc. and LBI Media, Inc., MB Docket No. 16-121, at Exhibit 19, Estrella Proposal to Comcast, Nov. 18, 2014, at 1 (filed Apr. 8, 2016) (proposing that [REDACTED]); *id.*, LBI Draft EstrellaTV Network and Stations Agreement, Dec. 31, 2014, at 7 (proposing that [REDACTED] (emphasis added)).

This is completely contrary to how a VPV aspires to be carried; *no limitations based on separate broadcast distribution signals exist for cable networks*.

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LBI receives from any MVPD the license fees for the white area feed or for retransmission consent for Estrella TV that it demanded from Comcast.

- Moreover, the much larger size of the Estrella TV white areas—as compared to those of Telemundo, Univision, and UniMás—is not, as LBI’s counsel suggested for the first time during the meeting, the result of an effort to prioritize white area satellite distribution over broadcast station distribution (contrary to the record of this case), but is rather a strong indication that Estrella TV’s programming simply does not present a particularly compelling value proposition.⁷ For example, Estrella TV lacks broadcast station affiliates in Boston, Philadelphia, and Washington, D.C., and many markets where the “Big Three” Spanish-language broadcast networks have owned-and-operated stations or affiliates. That lack of comparable *broadcast* distribution reflects a market judgment by broadcast station groups in those markets that Estrella TV programming lacks any significant audience that these broadcasters could profitably monetize.⁸ Moreover, many of the same station groups affiliated with Estrella TV in other parts of the country own broadcast stations in many of these markets, but have not affiliated with Estrella TV, and Estrella TV also has lost affiliates in certain markets. Yet it is precisely in these markets that LBI is demanding that Comcast carry its white area feed.⁹
 - For this reason, an obligation to carry the Estrella TV satellite feed in white area markets would mean that LBI’s failure to secure (or renew) broadcast affiliate

⁷ Comcast representatives briefly reiterated that there is no basis for suggesting that Comcast’s decision not to carry Estrella TV in white areas (or anywhere else) is related in any way to Comcast’s affiliation with Telemundo. In fact, Comcast *does* carry *unaffiliated* services Univision and UniMás in their respective white areas—disproving any claim of affiliation-based decision-making. Like Telemundo, Univision and UniMás both command extensive broadcast TV station distribution, and as a result their respective white area markets are limited. By contrast, LBI’s desired white area carriage was *expansive* precisely because of the lack of interest it receives in its programming by local broadcasters, especially in areas outside of the Southwest.

⁸ Comcast continues to carry Estrella TV to over {REDACTED} households—all based on retransmission consent arrangements with broadcast stations—and has made the determination to maintain carriage in certain local markets where it makes sense to do so. In addition, Comcast has added Estrella TV in certain markets such as Fresno, California, when the broadcast station signal was made available on realistic marketplace terms—further undermining LBI’s discrimination claims.

⁹ As Comcast representatives noted, this is yet another reason that an Estrella TV white area feed is not similarly situated to a Telemundo white area feed. Even setting aside the numerous ways in which Estrella TV and Telemundo are *dissimilar*, as Comcast and its experts laid out extensively in the record, *see* Answer of Comcast Corp, MB Docket No. 16-121, at 66-80, Decl. of Dr. Mark A. Israel, Decl. of Robin Flynn, Decl. of Professor Tomas A. Lopez-Pumarejo, & exhibits thereto (filed June 7, 2016), it is apples and oranges to compare a broadcast programming service (Estrella TV) that lacks broadcast distribution and therefore depends on a white area feed in markets like Boston, Philadelphia, Washington, D.C., and Hartford-New Haven to a service (Telemundo) that is distributed via broadcast stations in those same markets. Compounding this category error, the Telemundo broadcast station signals that Comcast retransmits in several Estrella TV white area markets (e.g., Washington, D.C., Hartford-New Haven, etc.) are Telemundo *affiliates*—i.e., owned by third-party station groups, not owned by Comcast/NBCUniversal—further demonstrating the inappropriateness of applying a program carriage framework to complex broadcast network carriage arrangements.

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relationships in any market would result in Comcast being forced to provide LBI an unjustified windfall for that failure in the form of carrying the satellite feed in those markets and paying fees to do so. That makes no sense as an economic, legal, or policy matter and is certainly not a result the FCC should be interested in compelling.

- As this example illustrates, allowing LBI to invoke program carriage remedies for the white area feed would provide LBI (and potentially other broadcasters) a perverse regulatory incentive to decommission more broadcast station distribution—or to not seek to grow its broadcast distribution—as opposed to making those decisions based on business factors alone. The marketplace should guide these determinations, not the government creating inappropriate remedies at a time when competition among programmers and programming distributors is greater than ever before.

Based on the foregoing and the extensive record in this proceeding, Comcast respectfully submits that this case should proceed to expeditious resolution with the Bureau affirming its Order, denying Estrella TV's petition for reconsideration, and reiterating its prior finding that, to the extent Estrella TV believes it qualifies as a VPV by virtue of its distribution of content in white areas, it is free to file a new complaint on that basis which Comcast can answer, or to pursue a good faith retransmission consent complaint under 47 C.F.R. § 76.65(b).¹⁰

Please do not hesitate to contact me with any questions.

Respectfully submitted,



Michael D. Hurwitz
*Counsel for Comcast Corporation and
Comcast Cable Communications, LLC*

cc: Markham Erickson, Steptoe & Johnson, LLP
Mary Beth Murphy, Media Bureau
Martha Heller, Media Bureau
Raelynn Remy, Media Bureau
Susan Aaron, OGC

¹⁰ See Order at n.77. At the meeting, LBI's counsel repeatedly referenced so-called "reliance interests" on asserted Commission precedent that it believed it had standing as a broadcast network to bring a program carriage complaint as a VPV. Such "reliance interests" are beside the point in assessing the merits of a complaint, but in any event the Comcast representatives noted that Comcast fully apprised LBI of its position that a broadcast network has no standing under the statute or decades of relevant Commission precedent and practice to bring a program carriage complaint (and did more than a month before LBI filed its complaint), which fair warning LBI cavalierly dismissed. See Complaint at Exhibits 8 & 9 (exchange of correspondence between Comcast's counsel and LBI's counsel, dated Feb. 18 and Feb. 26, 2016); see also Order at n.44 (citing and quoting Comcast's letter).